

EXHIBIT G

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 IN RE: TERRORIST ATTACKS ON
4 SEPTEMBER 11, 2001,

5 v.

03 MDL 1570 (FM)

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6 New York, N.Y.
7 March 22, 2016
10:20 a.m.

8 Before:

9 HON. FRANK MAAS,

10 Magistrate Judge
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1 (Case called)

2 THE DEPUTY CLERK: Counsel, please state your name for
3 the record.

4 MR. CARTER: Good morning, your Honor. Sean carter
5 from Cozen O'Connor on behalf of the plaintiffs.

6 THE COURT: Good morning.

7 MR. HAEFELE: Your Honor, Robert Haefele from Motley
8 Rice for plaintiffs.

9 MR. COTTREAU: Good morning, your Honor. Steven
10 Cottreau on behalf of Dubai Islamic Bank.

11 MS. BARLOW: Good morning, your Honor. Katie Barlow
12 on behalf of Dubai Islamic Bank.

13 MR. TARBUTTON: Good morning, your Honor. Scott
14 Tarbutton for federal insurance plaintiffs.

15 MR. KABAT: Good afternoon, your Honor. Alan Kabat
16 for Dr. Al-Turki.

17 MR. SALERNO: Good morning, your Honor. Peter Salerno
18 for Yassin Abdullah Kadi.

19 MR. GOLDMAN: Jerry Goldman with Bruce Strong,
20 Anderson Kill for the Plaintiffs Executive Committee and the
21 O'Neill plaintiffs.

22 MR. MALONEY: Good morning, your Honor. Andrew
23 Maloney with Jim Kreindler for the plaintiffs.

24 THE COURT: Who is hiding.

25 MR. KREINDLER: Good morning, your Honor.

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1 MR. NASSAR: Good morning, your Honor. Waleed Nassar
2 on behalf of the Muslim World League and International Islamic
3 Relief Organization.

4 THE COURT: I guess that's everyone.

5 Were you given a copy of the appearance sheet?

6 OFFICIAL REPORTER: Yes, your Honor.

7 THE COURT: Great.

8 I am sure you were told I would like to start with the
9 Dubai Islamic Bank motion.

10 MR. CARTER: Thank you, your Honor.

11 I think because of the telephone appearance, your
12 Honor, we need to be near a microphone, so.

13 THE COURT: Okay, sure.

14 MR. CARTER: If I stand here.

15 THE COURT: And I understand Mr. McMahon or his
16 colleague but we can't hear them quite as the well, is that
17 correct? Or not at all?

18 Okay, well let's go on.

19 MR. CARTER: Your Honor, with regard to Dubai Islamic
20 Bank there are two motions presently before the Court and
21 before getting into the specifics of the motions themselves, I
22 would just like to take a very brief moment to discuss the
23 procedural history of the disputes that brought us to this
24 point.

25 As your Honor is aware, Judge Daniels denied Dubai

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1 Islamic Bank's motion to dismiss concluding that the
2 allegations of plaintiff's pleadings were sufficient to
3 establish personal jurisdiction over Dubai Islamic Bank and
4 also holding with the exception of a limited number of claims
5 that plaintiffs had stated a claim under Rule 12(b)(6).

6 Judge Daniel's decision did not include a complete
7 recitation of every allegation the plaintiffs had offered
8 against Dubai Islamic Bank in support of their claims but it
9 did recount the broad picture that plaintiffs had portrayed as
10 to the historical relationship between Dubai Islamic Bank and
11 al Qaeda and clearly deemed that significant and relevant in
12 denying the motions to dismiss.

13 Judge Daniels specifically held that it can reasonably
14 be inferred from the allegations that Dubai Islamic Bank
15 personally and intentionally provided support to al Qaeda in
16 aid of their plan to commit an aggressive terrorist strike
17 against the United States. He cited in particular the pre-1999
18 collaboration between al Qaeda and Dubai Islamic Bank that
19 prompted U.S. officials to request a meeting with UAE officials
20 and seek an intervention; in their words clean up the bank.

21 He went on to thereafter deny Dubai Islamic Bank's
22 motion to dismiss under Rule 12(b)(6) and, in particular, the
23 arguments Dubai Islamic Bank had raised with respect to
24 causation explaining that al Qaeda's ability to accomplish the
25 coordinated large scale terrorist attacks of September 11th is

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1 dependent on the cumulative efforts and contributions of untold
2 thousands over an extended period of time.

3 It is the collective contributions of all such
4 sponsors that gives birth to a repository of seemingly endless
5 financial military and logistical resources from which the
6 terrorist organization draws upon with immunity to carry out
7 its attacks against innocent civilians. Such a reality bears
8 directly on the issue of temporal and causal proximity.

9 The result of that decision, your Honor, is that
10 plaintiffs were authorized to proceed with merits discovery as
11 to Dubai Islamic Bank. Of course, the scope of discovery
12 afforded in the context of that merits discovery as defined by
13 Rule 26(b) which broadly authorizes discovery into any matters
14 relevant to any party's claim or defense in the litigation.

15 The present dispute comes before the Court within that
16 framework and involves a set of very focused inquiries that go
17 directly to the heart of the nature, origin, and extent of
18 Dubai Islamic Bank's collaboration with al Qaeda and its
19 immediate partners. As detailed in the papers, your Honor, the
20 motions to compel focus on records relating to essentially six
21 primary categories.

22 First, individual al Qaeda members who are alleged to
23 have held accounts at Dubai Islamic Bank. In many cases
24 plaintiffs have provided the specific account numbers for the
25 accounts that those individuals held with the bank, at least to

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1 the extent known.

2 THE COURT: One of the bank's arguments is
3 burdensomeness because, apparently, even though you can
4 electronically search the accounts to come up with the actual
5 transaction records you need to go into boxes in warehouses
6 some of which had have been destroyed.

7 MR. CARTER: Your Honor, I think there are two
8 responses to that and one deserves a bit of context.

9 Dubai Islamic Bank has presented itself in dealing
10 with the plaintiff and to the Court as a sophisticated,
11 international financial institution which adheres to the
12 highest standards of international practice in banking and
13 financial markets that abhors terrorism of all kinds, and I
14 think that is significant in evaluating several of its
15 arguments including arguments about the feasibility of
16 searching for records relating to a specifically identified
17 account.

18 THE COURT: Well, if we remove the case from this
19 context and this was a large American bank, Citibank coming in
20 in relation to a contract dispute and they said you are asking
21 us to search for account number for -- and it is sort of the
22 fill in the bank as I'm not sure what the right number
23 150-some-odd, 200-odd or 2,900 accounts, but even if it were 10
24 accounts, if you are looking for a lengthy period of time,
25 every transaction Citibank arguably would be saying that's

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1 unduly burdensome even though we are already obviously a large
2 bank.

3 MR. CARTER: Your Honor, I think there are two points
4 that warrant examination here. The first is that Dubai Islamic
5 Bank can't present its own unwieldy record-keeping system as a
6 defense to its obligations under the discovery rules. The fact
7 that they don't maintain records allegedly in a form that
8 renders them easily searchable doesn't provide them with a
9 sword to defeat the normal operation of the discovery rules.

10 I think, additionally, it is difficult to reconcile
11 the description they've given of the record keeping processes
12 with their arguments concerning their operation as a
13 sophisticated international financial institution because there
14 must be circumstances in which authorities come to Dubai
15 Islamic Bank for a western bank and say, in relation to a
16 criminal investigation or a counter-terrorism investigation, we
17 need the records pertaining to a particular account. And we
18 have evidence that that happened here in fact. We have the
19 account of Ammar al-Baluchi for which there are documents in
20 the record indicating that the central bank of the UAE sent a
21 notification to Dubai Islamic Bank's CEO saying U.S.
22 authorities are going to come to visit you and request a
23 certification of the business records for this account. About
24 a month later Dubai Islamic Bank's head of money laundering
25 sent back a letter indicating that this is the certification of

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1 the business records which are attached.

2 So, we see in that framing that Dubai Islamic Bank
3 appears to have the capacity to do this when asked by
4 authorities and in fact it says in its motion that we have
5 complied with authorities from the UAE and from the US
6 government in all these counter-terrorism investigations.

7 So you now, somewhat quizzically, we don't have the
8 actual records attached to that certification of business
9 records. Also, with regard to the sufficiency of these
10 searches, the circumstances surrounding this Baluchi account
11 are concerning to us in that you have an inquiry from the
12 central bank that goes directly to the CEO of Dubai Islamic
13 Bank and then you, a month later, have the result of whatever
14 that inquiry was coming from the head of money laundering and
15 absolutely nothing in between. Nothing in between to describe
16 what happened once the notification was received by the CEO,
17 what processes were initiated initially to conduct the
18 investigation that was required and in obtaining the records,
19 no internal correspondence and certainly not the case that the
20 CEO walked downstairs and found these records himself. Some
21 process occurred and that process may very well reveal that
22 Dubai Islamic Bank does in fact have the capacity to find these
23 records.

24 On the burden, one other thing, your Honor, we have
25 been down this road before. You will recall in earlier stages

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1 when Mr. McMahon was representing the Muslim World League and
2 IIRO he indicated that the searches we were requesting they
3 make of the financial records were going to be incredibly
4 burdensome because they didn't keep their records in an easily
5 searchable form and they were going to have to go into the
6 individual files. And your Honor's response at that time was
7 this whole case is about money being diverted towards terrorist
8 goals. As I understand it, the lion's share of the effort is
9 to see where money went so the notion that this is a lot of
10 paper or bytes of information and therefore burdensome,
11 Mr. McMahon, doesn't really resonate with me.

12 And that is the situation here as well, your Honor.

13 THE COURT: I hope I said gigabytes. But, other than
14 that, however it was transcribed.

15 MR. CARTER: You probably did, your Honor.

16 THE COURT: Terabytes.

17 MR. CARTER: And so again, your Honor, with regard to
18 the individual accounts for the individual people, in most
19 cases we have identified the account numbers at least to the
20 extent we know them. We are not asking for, you know, whatever
21 discussions may have occurred in the context of the meet and
22 confer, the issue that is presently before the Court from the
23 accounts that are the subject of the motion to compel, it is a
24 very focused and limited number of accounts.

25 THE COURT: And what is that number? Approximately.

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1 MR. CARTER: Approximately? Well, I should say, your
2 Honor, we don't know entirely how many accounts these
3 individuals held but you are talking about only 8 individuals
4 and the Taliban accounts. Now, with regard though those it has
5 been argued it would be likely to, for them to search and find
6 any Taliban accounts. The problem is that they are required by
7 the international sanctions regimes to search for and identify
8 any accounts they hold for Taliban members who are on the
9 consolidated lists. We are simply asking them to do something
10 that they're required to do by law.

11 The additional problem, your Honor, is that we see a
12 notification from the period in 2003 to Dubai Islamic Bank
13 again from the Central Bank of the UAE asking them to search
14 for and freeze any accounts they hold with the below listed
15 members of the Taliban and Taliban-related entities. The
16 letter goes on to identify apparently 152 individuals
17 associated with the Taliban and one entity. All of the names
18 on that letter have been redacted in the production we
19 received. It is difficult to understand why but clearly those
20 are Taliban members and Taliban entities for which DIB was
21 required to and presumably has conducted a search.

22 Lastly, your Honor, we also know from the record that
23 there is evidence that authorities asked Dubai Islamic Bank to
24 close down a certain number, 16 or so, Taliban accounts
25 following the embassy bombings.

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1 THE COURT: Who made that request? Also the central
2 bank?

3 MR. CARTER: I believe it was UAE authorities. I
4 would have to double check that, though. So, we have a number
5 of circumstances in which these Taliban accounts have been very
6 specifically identified.

7 Now, with regard to the Taliban, your Honor, I also
8 want to address the relevance arguments.

9 THE COURT: Before we get to that, part of
10 Mr. Cottreau's papers say that you folks were seeking searches
11 for 2,900 individuals.

12 MR. CARTER: Well, your Honor --

13 THE COURT: Are you using smaller numbers?

14 MR. CARTER: Again, your Honor, these are issues that
15 most of the numbers are comprised of people who are on the
16 consolidated list and so that's a consolidated list, sanctions
17 list that goes out to all financial institutions and that all
18 financial institutions are required to conduct searches for.

19 Now, there were some additional al Qaeda-related
20 members that we had included in those lists but with regard to
21 the Taliban, it is not all that difficult to go back to the
22 list that exists say, for instance, between 2001 and 2004, a
23 relevant discovery period, and to determine which Taliban
24 members had accounts at DIB and which Taliban identified
25 entities had accounts at DIB and that's really all we are

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1 suggesting here.

2 THE COURT: One thing that struck me as overbroad but
3 it is largely nomenclature is you were asking for records
4 concerning accounts that were frozen following the terrorist
5 attacks which could be a lot of accounts unrelated as opposed
6 to asking for accounts which were frozen as a result of the
7 terrorist attacks which, presumably, is a smaller universe.

8 MR. CARTER: Yes, your Honor.

9 I think this issue about the nature of the request
10 potentially capturing the Foreign Narcotics Drug Kingpin Act
11 sanctions programs and other programs is a little bit of a red
12 herring. We are talking about accounts that were frozen
13 pursuant to the terrorism sanctions regimes and we can easily
14 just simply limit it to the relevant terrorism sanctions
15 regimes and therefore constrain it to the entities and
16 individuals that most clearly relate to the claims at issue in
17 this case. And we can conflate the period for which we are
18 seeking that information to a period reasonably following the
19 September 11th attacks and in that way substantially narrow
20 this.

21 THE COURT: Well, reasonableness is in the eye of the
22 beholder. Bear with me a second. What are you suggesting
23 would be reasonable stop and start dates for a search? And I
24 recognize it may be account-specific or category-specific.

25 MR. CARTER: Okay, your Honor. We were speaking a

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1 minute ago about the accounts frozen after 9/11.

2 THE COURT: Okay. Fair enough.

3 MR. CARTER: So, for those we would be talking about
4 September 12, 2001 and going forward to the period that's been
5 determined by the Court to be the outside limit of discovery
6 which is 2004.

7 Now, for the other accounts, for the specific al Qaeda
8 individuals in particular, some of these accounts clearly date
9 back to the period of 1992 and move forward for a longer period
10 of time and, again, relative to the relevance arguments, Dubai
11 Islamic Bank has posited that the September 11, 2001 attacks,
12 the planning for the September 11, 2001 attacks did not begin
13 until late 1988 and 1999 and therefore it is relieved of
14 responsibility for searching for any records that predate that
15 time period.

16 First of all, your Honor, we have already been down
17 this road as well and we set a presumptive time frame for
18 discovery in these proceedings and we certainly haven't limited
19 discovery to individuals specifically involved in the September
20 11, 2001 attacks over a period of two years that preceded it.
21 The Court has repeatedly authorized plaintiffs to conduct
22 discovery and to the broader historical relationships between
23 the defendant and al Qaeda dated back to 1992 and we are simply
24 seeking that same discovery with respect to the particular
25 individuals that have been identified in the briefing papers.

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1 So, the other problem with the argument that they have
2 made about the timing of the September 11, 2001 attacks and the
3 planning is that it is simply not correct.

4 They take a fragmented sentence out of the 9/11
5 Commission Report that really refers to the date on which
6 Bin Laden formally green lit the plot as a go ahead. That has
7 nothing to do with the date on which planning, consideration,
8 and evaluation of attacks against Americans exploiting the
9 civil aviation system. Al Qaeda began doing that much, much,
10 earlier.

11 Bin Laden was exploring those plots in the early
12 1990s. Khalid Sheikh Mohammed developed a plot -- the Bojinka
13 plot -- using funding that was provided by al Qaeda during that
14 time.

15 Khalid Sheikh Mohammed goes to Afghanistan in 1996
16 around the same time that Bin Laden arrives, he stays there
17 thereafter collaborating with Bin Laden. During that entire
18 period he is able to stay there, Bin Laden is able to stay
19 there because of the material support and resources being
20 provided by their benefactors. So,

21 the arbitrary idea that September 11, 2001 appeared
22 out of the wind suddenly in the beginning of 1999 doesn't have
23 any merit and, in addition, it is contrary to evidence we have
24 seen.

25 Relatedly, on the relevance front, your Honor, DIB is

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1 seeking to avoid discovery into its relationships with the
2 Taliban. This really goes to the heart of the claims.

3 In the period before September 11, Al Qaeda and the
4 Taliban had a symbiotic relationship, your Honor; they shared
5 common resources, intermingled their people. Al Qaeda fighters
6 went to fight alongside the Taliban in conflicts in
7 Afghanistan. Bin Laden lived side by side along with the
8 Taliban leadership in Kandahar. Most notably they shared
9 financial resources. The very foundation of this symbiotic
10 relationship was al Qaeda's provision of massive funding to the
11 Taliban to the tune of \$20 million a year which Bin Laden was
12 able to draw on the relationships he had with wealthy patrons
13 in the gulf and use that money as a shared financial base for
14 the Taliban around al Qaeda in exchange for which Bin Laden
15 enjoyed safe haven in Afghanistan throughout that period.

16 So, there is no divide between al Qaeda money and
17 Taliban money between this time period. If you want to find
18 al Qaeda money you are going to have to go to the Taliban
19 accounts. In fact, one of the diplomatic cables that was
20 released from Secretary Clinton's office identified gulf
21 patrons as the primary benefactor of both al Qaeda and the
22 Taliban, and as a consequence, the Taliban accounts are
23 absolutely critical to this. But you don't really have to take
24 our word for it, your Honor, the international sanctions and
25 declarations of United Nations Security Council make it

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1 absolutely clear.

2 In the wake of the embassy bombings the security
3 Council issued resolution 1267 which established the joint
4 al Qaeda and Taliban Sanctions Committee, a single committee
5 for both entities. It condemned the Taliban's role in working
6 with al Qaeda and directed all states to freeze funds and other
7 financial resources including funds derived or generated from
8 property owned or controlled directly or indirectly by the
9 Taliban.

10 So, the United Nations security council response to
11 the embassy bombings was a direct recognition that the
12 provision of support to the Taliban was support to al Qaeda and
13 that that support had directly enhanced al Qaeda's operational
14 capabilities. And so, the Taliban accounts, your Honor, go to
15 the very essence of whether or not this relationship existed.

16 On a related note, the issues that DIB has raised
17 again about the inquiries into its potential involvement in the
18 embassy bombings and in the accounts that were held by al Qaeda
19 members at DIB who were involved in the bombings go right to
20 the heart of whether or not DIB maintained relationships with
21 al Qaeda including support for its collaborational efforts to
22 attack the United States.

23 THE COURT: Let's talk a bit about some of your other
24 requests which is the documentation to the Shariah board and
25 Fatwahs and the like.

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1 MR. CARTER: Your Honor, if I may? One last thing on
2 a related subject and then I will go there?

3 THE COURT: Yes.

4 MR. CARTER: The '98 and '99 meetings in the offices
5 in the U.S. and UAE, I think, deserves a little bit more
6 primacy.

7 Again, Dubai Islamic Bank has presented itself as this
8 reputable international financial institution that cares deeply
9 about its reputation in the world and abhors terrorism of all
10 kinds. Following the 1999 meeting between U.S. officials and
11 UAE officials, a state department official publicly confirms
12 that a meeting was held between the U.S. official and UAE
13 officials to discuss Dubai Islamic Bank's role in laundering
14 funds on behalf of the world's most notorious terrorist Osama
15 Bin Laden.

16 On the same day, the New York Times published a very
17 prominent article indicating that the CIA had uncovered
18 evidence that DIB was serving as a secret channel for
19 laundering funds on behalf of Osama Bin Laden.

20 The reputational, financial, and business implications
21 of being so publicly indicated in laundering funds on behalf of
22 Bin Laden are remarkable and if we accept Dubai Islamic Bank's
23 own representations about its standing in the world community
24 and concern about its world reputation, it follows that some
25 inquiry would have been initiated by the leadership of Dubai

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1 Islamic Bank concerning the nature of these allegations and
2 whether they had merit and that there would have been some
3 internal investigation.

4 All we have is a few correspondence about a potential
5 lawsuit against the New York Times but nothing -- nothing --
6 resembling the kind of response you would expect for these
7 kinds of accusations.

8 What makes the matter all the worse, your Honor, is
9 the nature of Dubai Islamic Bank's relationship to the
10 government of Dubai and the UAE generally.

11 At the time this meeting occurs --

12 THE COURT: The bank is, in effect, government owned;
13 is that correct?

14 MR. CARTER: They say it is largely owned by the
15 government of Dubai. In addition, at the time of this
16 particular occurrence, it is publicly confirmed that U.S.
17 officials met with the ruling Maktoum family.

18 Now, at that time a member of the Maktoum family who
19 served as the vice president and prime minister of the UAE and
20 the leader of Dubai was the primary shareholder of Dubai
21 Islamic Bank. Now, given those relationships one would also
22 expect that Dubai Islamic Bank would have sent inquiries to its
23 primary shareholder and its government owners asking what was
24 the nature of these accusations. We need to investigate this
25 and we need to remedy this problem.

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1 Somewhat relatedly, your Honor, it also raises the
2 question as to whether or not Dubai Islamic Bank has the
3 practical ability to now obtain those documents from the
4 government itself through a request, or through a member of the
5 Maktoum family, by request. To the extent it has the practical
6 ability by virtue of the nature of the way communication and
7 documents flow between the government and the bank to obtain
8 these documents it should be required to seek them.

9 Your Honor, with regard to the Sharia advisory board,
10 the issue here is that the cooperation that has existed between
11 most patrons of al Qaeda and Bin Laden is founded on shared
12 ideology and we have identified individuals on the Fatwah and
13 Sharia board who have made various declarations consistent with
14 logical principles underlying Bin Laden's jihad.

15 THE COURT: It seems to me there are two separable
16 issues; one, Fatwahs where he is -- he can correct me when he
17 gets up if I have it wrong -- but part of the answer is we are
18 not responsible for anything somebody on the Sharia board may
19 have done individually which is a different question than the
20 discovery issue.

21 But, apart from specific Fatwahs, whether they are by
22 an individual or in individual capacity, or something official
23 from the bank, that's different than the Sharia board which I
24 gather is in effect the executive committee of the bank and has
25 dealings with every transaction to ensure that interest rate

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1 restrictions and the like are not violated.

2 MR. CARTER: I think that's right, your Honor, and
3 obviously we are not interested in every ruling issued by the
4 Sharia board as to whether or not a particular transaction was
5 in accordance with Shariah and Islamic principles. We are
6 really only interested in any declarations made concerning
7 supporting conflict in which al Qaeda were involved,
8 declarations to support jihad.

9 We are getting into a focused inquiry as to whether or
10 not the Sharia board issued any of the Fatwahs or rulings that
11 played overall in the decision of the bank to provide supported
12 to the Taliban or to Bin Laden or for causes they're
13 championing. So, that's really the focus area there.

14 Your Honor, I would like to really quickly say a word
15 about the records that have been provided for the individuals.

16 THE COURT: I am laughing because I was just about to
17 ask you that. Go on.

18 MR. CARTER: Essentially what we have gotten in most
19 cases are statements of the account and a few instances limited
20 numbers of documents relating to the opening of the account,
21 maybe a passport photo. The problem with statements is that
22 they simply are a snapshot of debits and credits. They don't
23 tell you where the money came from and they don't tell you
24 where the money went to and they're relatively useless. They
25 also don't even tell you in most cases how the money was taken

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1 out of the bank when there is a debit.

2 THE COURT: But they inform the discussion about
3 burdensomeness, don't they?

4 If, for example, a particular account only had three
5 transactions in a month, that's a different burden than if they
6 had 3,000. And if there is a transaction that involves the
7 equivalent of \$12, that's probably not one you are interested
8 in.

9 MR. CARTER: Your Honor, there are a very limited
10 number of transactions involved in these accounts and so I
11 think, based on the number of transactions, there is not a
12 tremendous burden. I think we would all agree that a
13 transaction for \$12 is not one that needs to be searched
14 exhaustively but -- you know, we are not talking about hundreds
15 of thousands of transactions here by any stretch of the
16 imagination.

17 THE COURT: The reason I am asking is if you were an
18 assistant U.S. Attorney and the grand jury subpoenaed and
19 subpoenaed a bank, a domestic bank here and said give me all
20 the records that relate to Frank Maas including but not limited
21 to copies of checks, deposits slips, and the kitchen sink, the
22 bank would respond in the first instance to the kitchen sink
23 grand jury subpoena with transaction records, monthly
24 statements and basically say circle the ones you really want.

25 And it sounds like there would be a two-step process

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1 from what you say here although you have seen relatively few
2 transactions and there probably could be some financial floor
3 such that de minimis transactions are not searched for
4 needlessly.

5 MR. CARTER: I think that would be possible, your
6 Honor. I think we also have to have all of the accounts.
7 Right now Dubai Islamic Bank has only agreed to search for a
8 very limited number of them. For instance, we don't have any
9 statements for the Taliban accounts so I think when we go
10 through that process we would like to have all of the
11 statements at issue so we can establish the floor, so we can
12 establish the range, and proceed sort of on a comprehensive
13 basis rather than doing it based on a very limited spectrum of
14 information that we have presently.

15 Your Honor, I think that is all I have. Thank you.

16 THE COURT: Thank you.

17 Just out of curiosity while you are gathering your
18 papers, is there anybody on the telephone?

19 MR. FOX: Hi. This is Jameson Fox of Martin McMahon
20 and Associates. We represent IIRO in this case.

21 THE COURT: We didn't hear you earlier so that's why I
22 was asking.

23 Go ahead, Mr. Cottreau.

24 MR. COTTREAU: Good morning, your Honor.

25 THE COURT: Good morning.

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1 MR. COTTREAU: Let me give a little bit of context to
2 the discovery disputes and what I consider to be the heart of
3 them.

4 Plaintiff's initial requests were not as Mr. Carter
5 said, very focused inquiries. There were essentially give us
6 all Taliban accounts, all al Qaeda accounts that you have.
7 Indeed, they have requests to that effect. They have issued
8 108 RFPs -- requests for production -- and they were incredibly
9 broad. One of the challenges we had when we first sat down in
10 March 2011 to talk about the requests that they had issued was
11 we are a bank, we are not experts in who are members of the
12 Taliban and al Qaeda and who are not, who are the members of
13 al Qaeda, and that became the issue and how do we search for
14 them.

15 First, most of the members of al Qaeda, I presume, are
16 Arabic names. Their Arabic names don't translate to English in
17 any rule-based way. There are multiples of ways, indeed dozens
18 in many cases, of ways of spelling Osama Bin Laden alone. So,
19 how is it that we even conduct this search of our account
20 records?

21 That was the initial problem. And then the plaintiffs
22 didn't just want the al Qaeda members and the Taliban members'
23 accounts if they were the accounts records but including
24 accounts that were for -- and this is a quote from one of their
25 RFPs -- the actual or potential beneficial interests in those

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1 accounts or for the benefit of those accounts.

2 THE COURT: Let me interrupt you for a second because
3 there are 152, I believe it is, accounts that apparently the
4 U.S. government believes were related to terrorism in some
5 fashion that formed part, even if it was a small part, of the
6 plaintiff's request. There was a production of at least one
7 document, 152 names redacted.

8 I am not sure I understand (A) the basis for the
9 redaction; and (B) assuming that the U.S. government was of the
10 view that those were accounts related to the Taliban why
11 records related to those accounts haven't been produced
12 already.

13 MR. COTTREAU: That's a good question, your Honor, and
14 let me try to address it very straightforwardly.

15 We agreed on two methodologies. DIB conceded we
16 should have two methodologies here. One is that any -- and
17 these are not U.S. government embassies, these came from the
18 UAE central bank.

19 Any government correspondence that Dubai Islamic Bank
20 received asking it about accounts that related to al Qaeda we
21 produced. We produced correspondence back and forth that we
22 had in the bank's files and we produced any account statements
23 that related to that correspondence.

24 THE COURT: But not the transactional records.

25 MR. COTTREAU: Right. So, if I can try to address

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1 transactional records second to the first just so that we are
2 covering it comprehensively?

3 THE COURT: Sure.

4 MR. COTTREAU: With respect to who are members of
5 al Qaeda, that was an easy one for us. Okay. If we got some
6 with government request giving us a name and we search for it
7 and we identified accounts, we will give them over and we did
8 and we have given all of those accounts.

9 THE COURT: When you say you have given the accounts,
10 the monthly statements in effect or the underlying transaction
11 records?

12 MR. COTTREAU: Really, there are probably four types
13 of records associated, if I could --

14 THE COURT: Sure.

15 MR. COTTREAU: -- with a bank account. Let's just
16 take a bank account.

17 First, there would be -- should be -- for most of
18 these accounts an account opening document when the customer is
19 new to the bank. Those always didn't get retained but most of
20 them have been retained. And so you have things like a copy of
21 the passport and address and things like that and so forth and
22 we have given those for any accounts that identified related to
23 al Qaeda in any of this correspondence.

24 Secondly, we can go to our legacy system. This is a
25 legacy system so it is not a live system of people's accounts

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1 from the 1990s, this is a legacy system for the bank. We can
2 access the databases that were kept by the legacy system and
3 query them with the help of an IT department. It's not a front
4 end where you can go type on a terminal somewhere and access
5 this data anymore.

6 THE COURT: All right.

7 MR. COTTREAU: So, you can find the accounts and
8 generate essentially the account statements, what you would get
9 if you were a banking customer; records of debits and credits
10 from the account. Then there is two types of transactional
11 records that are sometimes associated with each of the things
12 on the account statement. First, there is additional --
13 sometimes additional electronic information that exists in the
14 databases about each transaction. And then, fourth, there is
15 paper records that relate to each transaction.

16 So, if you go to the bank and you want to deposit cash
17 you would write a slip out, right, and give it to the teller.
18 In many cases pretty meaningless pieces of paper but,
19 nonetheless, those are collected by the tellers -- and this is
20 a generalization because branch by branch, over time, practices
21 may have changed -- but, generally speaking, the teller would
22 bundle up her bundle at the end of the day -- his or her
23 bundle -- put it together, those would be accumulated with the
24 other tellers' at that branch and put into a box or put into a
25 folder and eventually those things got filed in offsite

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1 storage.

2 There are transactions that are incredibly more
3 complicated to find than things like that. If a customer would
4 send in a check that needed to be deposited it may sit at the
5 bank for two, three, four days after the date of deposit before
6 it is ultimately cleared and bundled up and they're very hard
7 to find, extremely hard to find.

8 So, with respect to those four types of account
9 records we agreed the following with plaintiffs and this was
10 back in our meet --

11 THE COURT: Well, you have talked about deposits. I
12 assume there were also transactions going out, checks or the
13 equivalent? Wire transfers?

14 MR. COTTREAU: Sure.

15 If a DIB customer writes a check, gives the person a
16 check, that check is deposited at another bank, for example,
17 eventually that check comes back and is presented to Dubai
18 Islamic Bank and the practices changed over time and the check
19 is either honored or not. Those checks that are bundled up
20 together and cleared in that way are hard to find. They're
21 obviously not teller records, they're going to be put in
22 various boxes over time and the index, you can imagine there
23 are over 50,000 boxes here. It is hard to -- you are looking
24 for a needle in a hay stack every time.

25 So, what we agreed with the plaintiffs in our meet and

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1 confer -- and this is confirmed in my July 2011 letter that you
2 have as part of our submission -- what we agreed was we will
3 give you the account opening statements, those are easy --
4 relatively easy to pull. We will give you the printouts from
5 our legacy computer system showing each and every transaction
6 in the accounts. But, with respect to the transactional
7 records this is really burdensome to find, they're difficult.
8 I'm not even saying they're findable. Some of them might not
9 be. Come back to us and tell us which ones you want us to pull
10 and which ones you didn't.

11 That was a conversation we had in March 2011. It was
12 confirmed in my letter in July 2011. We produced -- we
13 completed our production minus some additional supplements over
14 the years but we completed our production in principle at the
15 end of August 2012 consistent with your order. And largely we
16 produced the account statements in that August batch because it
17 was our production that was made after we finally got UAE
18 approval to produce account statements with your Honor's help.

19 THE COURT: You said that was 2012?

20 MR. COTTREAU: 2012.

21 The plaintiffs never came to us in the intervening
22 years and said pull these transaction documents for these
23 accounts or pull them all. They stayed silent. The first time
24 we heard from plaintiffs on this issue was on the day before
25 they filed their motions to compel. We had a quick meet and

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1 confer on July 13th, 2015 and that was the first time they ever
2 voiced that they wanted them all pulled. And these aren't easy
3 to pull -- and the accounts records that we have already
4 produced, your Honor, we have produced, I believe, for seven
5 customers eight accounts with over 700 transactions on the
6 account statements. And sometimes, just for example, if you
7 try to find a check that was cleared by Dubai Islamic Bank, I
8 have looked into the burden of this even as recently as last
9 month to make sure I try to fully understand what we are up
10 against here; you might look through two, three, four boxes for
11 that branch for that day and not find it. And then you have to
12 look through two, three, four boxes per day afterwards and it
13 is not even easy to locate the two, three, four boxes on the
14 index because, as I said, it is essentially a hand-keyed index
15 for 50,000 boxes. They are not even easy categories to
16 identify the boxes on the index. If it is conceivable to try
17 to find one of these checks it may take a person around a day
18 or even longer to take a person to find one check that is
19 cleared by the bank.

20 THE COURT: Presumably, if you had a defined universe
21 of accounts and checks -- restrict it to accounts. If you had
22 a defined universe of accounts you wouldn't have to make
23 repetitive passes, you would look for all the checks for those
24 accounts in box one and move to box two?

25 MR. COTTREAU: That's true, but there is almost no

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1 overlap, your Honor.

2 THE COURT: Putting aside the question of whether
3 plaintiffs delayed too long, one of the problems with your
4 argument is assuming that these transactions or transfers are a
5 significant element to the plaintiff's case, you are basically
6 saying because of the burden they shouldn't be enabled to prove
7 their case, assuming they can.

8 MR. COTTREAU: We have never said no transactions.
9 Here is what I think would be --

10 THE COURT: Well, the transaction -- would you agree
11 that the transaction records with transaction summaries -- let
12 me call them that -- without the underlying transaction
13 records, are pretty useless?

14 MR. COTTREAU: I wouldn't agree with that. I agree
15 that in some cases they may have a more limited utility but I
16 don't think, for example --

17 THE COURT: There is an account that can be shown to
18 be an Osama Bin Laden account and it shows a million dollars in
19 and a million dollars out every month for a year without
20 something that indicates where the million came from and where
21 it went. Isn't it pretty useless?

22 MR. COTTREAU: In that example it may be. We don't
23 have any account for Osama Bin Laden. We have never had an
24 account for Osama Bin Laden to the best of all of our
25 investigation efforts dating back to 1999. And so, I will give

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1 you an example, your Honor, a cash deposit, \$500. Do we really
2 need to go find the deposit ticket for that?

3 THE COURT: Okay.

4 MR. COTTREAU: Okay.

5 THE COURT: It seems to me that the answer is
6 self-evident.

7 MR. COTTREAU: An electronic transfer from one account
8 to another and we can tell on the electronic transfer data what
9 that is. That's another one. There may have been a piece of
10 paper initiating it but we have a pretty good handle from the
11 electronic data what that is.

12 THE COURT: Okay. Well, you said in those accounts
13 there are 700 transactions. How many of those are non-cash
14 paper transactions where one would have to look at the
15 underlying record to have an understanding of what actually
16 occurred?

17 MR. COTTREAU: I think that's something we could
18 parse. I know this, about 170 of them I think are ATM
19 transactions, maybe 169, but approximately 170 are ATM. No
20 reason to pull those, obviously.

21 My suggestion would be this, your Honor, that we do
22 two things with respect to the transactional records. Number
23 one, the electronic data that we have associated with each and
24 every one of the transactions, we produce that, because I think
25 that's something we can get out with a query fairly easily

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1 compared to the task of sorting through this index of over
2 50,000 boxes and try to assess where things might be. And then
3 my other suggestion would be that we look at something that is
4 proximate in time.

5 Now, Mr. Carter said that we were taking the position
6 that we are not going to produce records back to 1992. That's
7 not our position and, indeed, for each of these eight accounts
8 if we had any account statements between 1992 and September 11,
9 2001, they were produced.

10 THE COURT: Tell me again what the eight accounts
11 relate to?

12 MR. COTTREAU: The eight accounts were the result of
13 two-fold methodology that we were talking about earlier, your
14 Honor, which is any government correspondence but primarily
15 with the UAE Central Bank, I assume some of that may have been
16 cooperation with the U.S. authorities but that's a complete
17 assumption on my part. But, beginning within two weeks after
18 9/11, the UAE Central Bank started sending around what they
19 call circulars to all of the banks asking whether you have
20 accounts in the following names.

21 THE COURT: Copies of some of which are in the papers?

22 MR. COTTREAU: Copies of some of which I think are
23 appended to their reply at A through H or so.

24 And we did account searches. These aren't easy. I
25 will give you an example of one of the accounts we produced to

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1 plaintiffs as part of this batch, the account that Mr. Carter
2 identified as Ammar al-Baluchi. We didn't have an account for
3 Ammar al-Baluchi. Okay? And this is the challenge of what
4 plaintiffs want us to do. They identify eight people and they
5 say: Find the accounts. But we did have an account for Ali
6 Abdul Aziz Ali. It turns out that's Ammar al-Baluchi's alias.
7 We found it because we were given the name and the alias, but
8 otherwise we would have no way of knowing that Ammar al-Baluchi
9 is as Ali Abdul Aziz Ali. The names are not close, they're not
10 in any way connected in our minds at the bank and certainly not
11 me as outside counsel.

12 And so, what we gave plaintiffs is the result of our
13 two-step process. Step one, anything related to al Qaeda that
14 was an account identified in any government correspondence that
15 we got they have and they have it already and they have all of
16 the account statements and they have all of the account opening
17 documents that we have.

18 Secondly, we have this problem, the Ammar al-Baluchi
19 and Ali Abdul Aziz Ali problem and the question was you are
20 asking for every Taliban member, every al Qaeda member ever and
21 you want us to identify who is al Qaeda and who is not.

22 THE COURT: That was the 2,900 names or individuals?

23 MR. COTTREAU: Yes.

24 THE COURT: It sounds like we are now talking about a
25 far smaller universe.

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1 MR. COTTREAU: If we are, we are. If we are talking
2 about 400 Taliban names that were on the list that we received
3 from Mr. Carter's colleague which is at Exhibit 2 to our
4 papers, there are, by our account -- some of these names aren't
5 easily identifiable but, by our count, almost 400 individuals
6 in the Taliban. Some joined the Taliban after 9/11. Some
7 people on the list of 2,900 names were 13 years old at the time
8 of 9/11.

9 THE COURT: But their accounts could still be used.

10 MR. COTTREAU: I suppose so but there is no -- I mean
11 even in plaintiff's own -- in their reply brief they talk about
12 what the financial flows are between al Qaeda and the Taliban
13 and they say it is from the al Qaeda to the Taliban to the tune
14 of \$20 million in the annual budget. There is no evidence that
15 the plaintiffs put forward that the Taliban is giving money to
16 al Qaeda or that somehow Taliban accounts throughout the world,
17 there is no allegations in plaintiffs complaint that we had
18 Taliban accounts, there is no allegations in their RICO
19 statements that we had Taliban accounts and what we had, your
20 Honor, was a list of 2,900 names and we have to hand write
21 queries, sequel queries of underlying databases in the legacy
22 system to find out if there is a hit on each one of those
23 names.

24 And so, the question was how do we reasonably cut it
25 back? And so, what happened was we received this list in July,

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1 we analyzed the list and we tried to figure out how can we
2 reasonably cut back the list of 2,900 names to something that's
3 accomplishable?

4 And so, we went through the 9/11 Commission Report,
5 all 567 pages. If a name appeared in the 9/11 Commission
6 Report to have anything to do with 9/11 we kept it on the list
7 and we took all the aliases that were listed in the documents
8 in the list that plaintiffs provided, and we took all the
9 aliases in with it.

10 So, anybody in all 567 pages of the 9/11 Commission
11 Report who is connected in any way to 9/11, we kept them on the
12 list. That gave us a list with the search terms that we had
13 already agreed with plaintiffs to provide of 261 names. And we
14 wrote to plaintiffs on September 8, 2011 and said, hey, this is
15 our methodology, here is what we have done. Let us know.

16 We were up against, at that time, a more pressing
17 document discovery deadline and we wanted to move forward, we
18 then didn't hear anything for two weeks. We wrote to them
19 again and this is these two letters are Exhibits 3 and 4 to our
20 papers, we wrote again to Mr. Carter and said we haven't heard
21 from you, we would like to move forward, we have increased the
22 list to take into account punctuation so if there is an accent
23 that might be recorded as a hyphen after the name or an
24 apostrophe after the name, we have added some additional search
25 terms and here the final list at 261. Essentially, we are

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1 going to move forward unless we hear from you and we haven't
2 heard from you in in response to our prior letter. We never
3 heard from them.

4 When they reach out to us -- and this is Exhibit 2
5 with a list of 2,900 names, it is an e-mail from Scott
6 Tarbutton and he attaches the two lists that amount to 2,900
7 names. He ends his e-mail with this: *I fully anticipate that*
8 *the list will be finalized next week once I have an opportunity*
9 *to speak with our translators and have further discussed the*
10 *same and received final approval from our co-plaintiffs. Once*
11 *we provide you with the finalized list, plaintiffs will be in*
12 *touch to discuss the methodology and scope of the record system*
13 *searches to be conducted by DIB.*

14 And that was on July 15th. We wrote back with our
15 alternative methodology at Exhibit 3 on September 8, wrote back
16 two weeks later on September 22nd. Never heard from
17 plaintiffs. They never called up with their finalized list,
18 they never reacted to our initial cut down of the list. They
19 never reacted to 261 terms. We produced the results of those
20 searches and the accounts that were identified in connection
21 with the government inquiries in August of 2012.

22 THE COURT: One of the things you produced, though, is
23 a document that I gather relates to accounts that the U.S.
24 government, perhaps through the UAE Central Bank had requested
25 information about 152 names and there is a document within the

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1 exhibits I have been given which redacts all of those names and
2 I can't for the life of me figure out what the basis for the
3 redaction is.

4 MR. COTTREAU: The basis for the redactions are
5 they're not related to al Qaeda and our responses to those are
6 not simple matters. There are customers who are identified in
7 the responses who may not be the people they're looking for.
8 The government might not -- their response is --

9 THE COURT: Where did the list of 152 names come from
10 originally? I gather that traces back to -- and you may not
11 know the answer -- but I gather it traces back to a U.S.
12 government request?

13 MR. COTTREAU: I don't have any idea. I can speculate
14 that that's the case.

15 THE COURT: Let me interrupt and ask Mr. Carter his
16 understanding.

17 MR. CARTER: Your Honor, I don't know the origin of it
18 but the list specifically identified these individuals as
19 individuals who are members of the Taliban or entities
20 associated with the Taliban and this is the heart of the
21 problem.

22 THE COURT: But I could generate a list that says Jim
23 Kreindler is a member of the Taliban and give it to
24 Mr. Cottreau. There must be some understanding where this list
25 emanates from. The U.S. government?

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1 MR. CARTER: I am sure it is the U.N. sanctions list,
2 your Honor, relatively sure, and the problem is Mr. Cottreau
3 just said we redacted them and didn't do anything because
4 they're not related to al Qaeda. They're Taliban, they are
5 related to al Qaeda and that's the essence of --

6 MR. COTTREAU: The U.N. sanctions 1266 list which is
7 actually attached to Mr. Tarbutton's e-mail at Exhibit 2 to our
8 papers actually distinguishes the list person by person whether
9 they're affiliated with al Qaeda or the Taliban.

10 We had 2,900 names. We weren't going to search all
11 2,900 so we took the following approach. If they're in the
12 9/11 Commission Report, great. If they're not, we have to draw
13 a line somewhere. Then we are free to come back and say draw a
14 different line.

15 THE COURT: Tell me the principal basis for saying we
16 have searched the 9/11 Commission Report and we have also been
17 given a list of 152 names, admittedly prospectively Taliban,
18 not al Qaeda but those (A) we are not searching, but (B) to
19 protect the identity of the account holdings we are withholding
20 the name.

21 MR. COTTREAU: Your Honor, we had the following
22 methodology which we were completely transparent in several
23 pieces of correspondence with the plaintiffs and we were going
24 to take two approaches. One is if a person was identified as
25 being affiliated with al Qaeda in government correspondence and

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1 we had accounts for that person that we identified as part of
2 the process of responding, we would produce.

3 There was never, until I showed up at the hearing,
4 there was never any discussion with plaintiffs ever about other
5 people on other -- other people with other organizations in
6 government correspondence including the Taliban.

7 THE COURT: Are the 152 within the 2,900? Do you
8 know?

9 MR. COTTREAU: I don't know. I don't know.

10 THE COURT: Mr. Carter, do you know?

11 MR. CARTER: I don't, because the 152 have been
12 redacted.

13 THE COURT: Well, that's fair. Fair enough.

14 MR. COTTREAU: There were almost 400 names in the list
15 that they sent on the 2,900 that were related to the Taliban.

16 THE COURT: Okay.

17 MR. COTTREAU: There is the John Smith problem
18 everywhere in the world as I have learned from searching bank
19 records from case to case, and in these pieces of
20 correspondence, your Honor, there are customers who are
21 identified who don't appear to be, *"these aren't the droids*
22 *they're looking for,"* if you will, and this was the Taliban.

23 In all of our discussions we never agreed to search
24 government lists related to Taliban or other organizations or
25 narcotics trafficking. We always agreed -- and I thought this

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1 was the one area until I walked into the hearing today that we
2 had complete agreement on, that we would take government lists
3 that relate to al Qaeda and produce the accounts related to the
4 people on that list. And the only time the Taliban ever came
5 up in any of the discussions before I walked in here today was
6 as part of plaintiff's list of 2,900 names in their July 2011
7 submission which was identified to us as a draft submission and
8 they never submitted a final list of terms.

9 So that's how we got in here and, quite frankly, you
10 know, 400 terms, we have searched 261 that are for al Qaeda and
11 looked through the government list for all core al Qaeda and
12 looked through all the electronic and account opening
13 statements that we have for those accounts. It seems to me
14 that the Taliban issue, 400 names, they're not in the
15 complaint, they're not in the RICO statements, they can't even
16 identify any connection between these 400 names and 9/11 or
17 have any reason to believe that we have any of those 400 names
18 at our bank. It is an enormity of an effort that surpasses the
19 one we have previously done in searching the 261 terms.

20 THE COURT: Why don't you move on to some of the other
21 broad categories like the fatwas and the Sharia board?

22 MR. COTTREAU: Sure.

23 In no particular order, your Honor, but I am going off
24 the list that Mr. Carter generated in my notes, with respect to
25 this alleged meeting in or over about July of 1999 between U.S.

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1 and UAE officials, it was identified initially in plaintiff's
2 discovery request to us as a meeting attended by DIB -- by
3 Dubai Islamic Bank. That was the basis on which we objected to
4 it as ambiguous because we had no idea of any meeting attended
5 by any official at the bank and, indeed, still do not. And we
6 ultimately redefined that term to include meetings that
7 happened between officials at the UAE and the U.S. government.
8 I still don't know what level of government that happened at,
9 if that was the Dubai government, the UAE. The plaintiffs
10 production entire production on that meeting consists of the
11 New York Times article and the State Department briefing and we
12 don't have any more information. Plaintiffs have said we
13 produced nothing. That's not true.

14 In the wake of the July 1999 article we conducted an
15 internal investigation with a gentleman who was there helping
16 with some asset tracing, his name is Robert Ellison. We
17 produced a tremendous amount of correspondence with him. At
18 the time the bank had engaged two U.S. lawyers as part of that
19 asset tracing project and they were around to assist. We
20 waived privilege and produced the correspondence with those two
21 U.S. lawyers Alan Fine, who is a Judge in Miami; and Bill
22 Ritchie.

23 Their notes reveal the steps on the investigation
24 including calling various people in the U.S. government to try
25 to obtain more information about this meeting. They vetted the

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1 issue of whether Osama Bin Laden was a bank customer -- and he
2 wasn't which was the core allegation. They were trying to get
3 more information about who else are you looking for. And all
4 of that is revealed in 101 pages in our production and the
5 plaintiffs -- and I was a little bit surprised to hear we
6 produced almost nothing today because the plaintiffs coincided
7 the 101 pages in their own papers in this case.

8 So, on that meeting we have produced everything we
9 have and, indeed, we have waived privilege on what we did have
10 with these U.S. lawyers who were helping to look into the
11 issue.

12 On the Fatwah and Sharia board -- let me try to
13 explain Islamic banking a little bit. It is governed by a 1985
14 UAE law which we have attached as part of our submission as
15 well. There are special banking laws in the UAE and in many
16 other countries that govern the federal laws to Exhibit 7 to
17 our papers.

18 A Shariah board, its function is to assure Shariah
19 compliance and that means compliance with principles of Islamic
20 law. That usually means a number of things but probably the
21 most animated feature in most of its decision is a concept of
22 Riba which is similar to usury although it can have a broader
23 meaning. Some folks take the view that maybe most folks that
24 it prevents the charging of interest at all.

25 The Shariah board's function isn't to go and find

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1 customers, it is not to approve which customers we do business
2 with, it is to approve transaction forms. It doesn't look at
3 every checking account or, as they call it in the Middle East,
4 a current account. It doesn't look at every savings account to
5 ensure that no interest is being paid in the account. It
6 doesn't approve any customers. It says here is -- when the
7 bank wants to have a certain type of account or product at the
8 bank they say here is the structure of the product and the
9 Shariah board looks at the structure and approves the
10 structure.

11 They may say well, you have to inform the customer for
12 fairness reasons of this, that, and the other, and that gets
13 written into the official product literature which is
14 ultimately issued and then the business people take the idea
15 and run with it.

16 The issue in this case is how do we get these
17 customers and was it intentional that we had these customers
18 because, as you know or may know, Citibank, Sun Trust, HSBC,
19 Chartered Bank all have accounts for people who are related to
20 al Qaeda and, indeed, no one knew who these people were and
21 that's why these people were let into this country, by and
22 large; at least many of these folks, the hijackers.

23 So, in terms of the Shariah board's function, we don't
24 see it as particularly relevant. They don't pass on who our
25 customers are. And what we said to them and what we gave them

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1 in our initial productions were documents sufficient to show
2 the role of the Shariah board and that's what we have produced
3 thus far.

4 We were happy to include also the charter which we
5 attached that spells out that rule for the Shariah board.

6 THE COURT: How about the Fatwahs?

7 MR. COTTREAU: The Fatwahs, your Honor, are --

8 THE COURT: You draw a distinction between those
9 instigated by individuals who may be a member of the Shariah
10 board in their individual capacity and anything that a Shariah
11 board does in its corporate capacity, if I can call it that.

12 MR. COTTREAU: Well, let me try to confirm the term
13 Fatwah.

14 THE COURT: Please.

15 MR. COTTREAU: It is essentially a religious
16 pronouncement, okay, that generally speaking at least under
17 law, banking law has to be done by three or more members
18 together acting together. Every single official Shariah board
19 Fatwah at Dubai Islamic Bank has to be approved by the entirety
20 of the board. They do it by approving transactions. A lot of
21 times they get the customer name, the customer details, the
22 details of the transaction, if it is a one-off type of
23 transaction. This would be a specialized corporate banking
24 transaction, for example.

25 So, there are all kinds of personal details about bank

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1 customers in these documents. Sometimes they're scrubbed,
2 sometimes they're not. But they're all far afield from what we
3 are talking about here which is by and large retail banking for
4 individuals where there is no pronouncement at all by the
5 Shariah board about other than to say you can have a checking
6 account, what they call a current account or savings, what they
7 call an investment account.

8 So, in terms of the pronouncements of the Fatwas, they
9 just don't really have much to do here given the role of the
10 Shariah board at the bank.

11 THE COURT: So, you are saying at least in relation to
12 the official acts of the Shariah board the fatwa is the Dubai
13 equivalent of a corporate resolution?

14 MR. COTTREAU: Yes. They look at the transaction.

15 Proposed is a joint investment because they don't do
16 loans. A joint investment with customer ABC Company. This is
17 not something that we have a stock form for so it is going to
18 be drafted by the lawyers. Here is the draft of the paper, it
19 is a three-year partnership, we are going to contribute this.
20 Our partner is going to contribute that, we are going to share
21 the profits equally or however we are going to share it. That
22 is presented to the Shariah board and they issue a Fatwa saying
23 you can or can't do it or you have to change this about it.

24 Again, they don't identify even those business
25 partners but they essentially have a negative function. They

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1 can essentially veto, if you will, transactions. Any of the
2 bank transactions that occurred which are the transactions that
3 would be relevant in this litigation, any of the bank
4 transactions that occurred weren't as a result of the Shariah
5 board identifying customers or telling anyone that you have to
6 engage in this type of transaction. Their only function in
7 terms of a positive "you have to" has nothing to do with retail
8 banking.

9 So, that's where we are on the Shariah board. We have
10 offered in our papers to also give them a complete list of
11 Shariah board members from 1992 to September 11, 2001 because
12 one of the people that they feature very prominently in their
13 papers with you, your Honor, issuing these personal Fatwas
14 wasn't even on the Shariah board at the time leading up to
15 September 11, 2001. He was added to the board years after and
16 was ultimately -- you know, ultimately finished his service
17 with the board.

18 In terms of the Shariah board, just so your Honor has
19 some understanding of this, Dubai Islamic Bank is the first
20 Islamic bank in the modern world. It was formed in 1975 to
21 offer these products for Muslims who believed that interest was
22 against the teachings of Islam and added its function since
23 1985 has functioned under the Shariah banking law of the UAE.
24 And there are Shariah board members who do this, it is not a
25 full-time job. They come in and they meet and they pronounce

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1 on products periodically and they serve on, in some cases,
2 dozens and dozens of other bank's Shariah boards. These are
3 people who have made a name for themselves of being Islamic
4 scholars, they're usually professors or other scholars and they
5 have something to do with the financial industry, have some
6 status to be able to say what is Shariah complaint and what is
7 not when they act together as a board.

8 THE COURT: So they're not, just out of curiosity,
9 they're not clerics, typically?

10 MR. COTTREAU: I don't believe so. I believe they're
11 more professorial. The head of our Shariah board was a former
12 Egyptian Attorney General.

13 So, these aren't people who -- they come to work, they
14 pronounce on the products and that's their role at the bank and
15 I don't see how it is particularly relevant and never have
16 here.

17 THE COURT: Anything else?

18 MR. COTTREAU: Not unless you have any questions.

19 THE COURT: Not at the moment. Thank you.

20 MR. COTTREAU: Thank you.

21 THE COURT: Anything further, Mr. Carter?

22 MR. CARTER: Briefly a few things, your Honor.

23 Mr. Cottreau has spent quite a bit of time talking
24 about the back and forth around the meet and confer at the
25 beginning of discovery and candidly, your Honor, it is a

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1 diversion that has very little to do with what we are here
2 about today. We are talking about essentially agents, al Qaeda
3 members accounts, Taliban accounts, investigations into the
4 embassy bombings. We are not talking about what ideas the
5 parties exchanged at the time.

6 What I will say about that --

7 THE COURT: Well, there is a little question that the
8 ball got dropped for a considerable period of time.

9 MR. CARTER: Well, your Honor, what I would say about
10 that is --

11 THE COURT: Isn't that fair? Regardless of who may
12 have dropped the ball, a lot of time has passed where virtually
13 nothing has occurred.

14 MR. CARTER: A lot of time did pass, your Honor.

15 What I will say is at the first meeting, in conferring
16 with Mr. Cottreau he is incorrect in suggesting that we did not
17 raise an issue with the Taliban accounts. We had a very
18 spirited discussion about the Taliban accounts as well as
19 accounts DIB maintained for Hamas related entities.

20 As to the Taliban accounts, we made clear our view
21 that they were very directly related to the support of
22 al Qaeda. As to the Hamas accounts, we articulated our view
23 that they were relevant to our DIB defenses. In particular, if
24 it is going to come into court and argue on the merits that it
25 abhors terrorism and would never be associated with a violent

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1 jihadist organization but is maintaining accounts for Hamas, we
2 thought that was relevant and that also going to the Taliban
3 accounts. If you are maintaining accounts for Taliban during
4 the period when United Nations is condemning it for its role in
5 supporting Bin Laden, that's relevant not only to our claims
6 but their defenses.

7 What we decided was it was clear that Dubai Islamic
8 Bank was not willing to go into that territory without court
9 intervention and had decided to conduct the searches it wanted
10 to search. We didn't know of anything about the internal
11 system or what the searches would yield. So, we agreed to wait
12 to see what came back before seeking court intervention.
13 Candidly, your Honor, if they came back with a stack of papers
14 saying here is the transaction that the U.S. government was so
15 worried about that prompted its conversations with the UAE, we
16 may very well have rested on our laurels at that point. It
17 didn't come to pass.

18 With regard to the delay, your Honor, we had always
19 indicated from the outset that we wanted to wait until all of
20 the defendants had produced their documents before moving
21 forward with full scale motion practice and there was a reason
22 to that. We saw interconnectivity among the defendants and in
23 fact, your Honor, one of the recent productions from defendant
24 al Kadi includes a transaction involving an account held by an
25 individual who is identified as a close associate of Bin Laden

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1 at DIB. And so, we sent a supplemental request for that. Most
2 of the delays, your Honor, in going to the phase of motion
3 practice have been related to the other defendants asking for
4 more time to complete their productions.

5 We finished ours in August 2012 as well, but at the
6 end of the day --

7 THE COURT: Well, let's just be clear.

8 In terms of accounts there is the 261 that the bank
9 has proffered generated however. There is the 152 alleged
10 Taliban accounts. There are eight other accounts and I am not
11 sure how to generically describe those and I'm not sure whether
12 they're in the 261.

13 MR. COTTREAU: Your Honor, if I can just clarify?

14 THE COURT: Yes.

15 MR. COTTREAU: The eight accounts are actual accounts
16 found and produced to the plaintiff.

17 THE COURT: Okay.

18 MR. COTTREAU: The 261 are search terms that were
19 agreed upon by the plaintiffs and the defendants and/or that we
20 added from the 9/11 Commission Report as a subset of their
21 2,900.

22 So, the 261 is a combination of names that we had
23 agreed already in our objections to search plus the subset of
24 this 2,900 that was in the 9/11 Commission Report.

25 THE COURT: Okay. So, there are 421 accounts, eight

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1 of which have been produced.

2 MR. COTTREAU: Hold on.

3 THE COURT: The balance of which.

4 MR. COTTREAU: Search terms, not accounts.

5 THE COURT: Okay.

6 MR. COTTREAU: The 152 accounts don't exist and the
7 261 accounts don't exist.

8 THE COURT: So it may well be that the 261 generates
9 fewer accounts.

10 MR. COTTREAU: It may be that it generates no
11 accounts.

12 THE COURT: Right. The 152, on the other hand, are
13 accounts.

14 MR. COTTREAU: No. Not necessarily.

15 THE COURT: Oh okay.

16 MR. COTTREAU: Those are, again, names that were
17 provided in a central bank circular that were affiliated with
18 the Taliban.

19 THE COURT: Okay. Let me then revert back to you,
20 Mr. Carter, and say beyond that universe of 421 today,
21 regardless of how we got there starting with 2,900 what, if
22 anything else, are you looking for?

23 MR. CARTER: Well, your Honor, I think again the 261
24 was the list they generated from the 9/11 Commission.

25 THE COURT: Right.

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1 MR. CARTER: It would have excluded, for instance,
2 al Qaeda members involved in the embassy bombings who just
3 didn't happen to be mentioned in the 9/11 Commission Report
4 which was the case with a lot of people.

5 In terms of the accounts for which we are seeking
6 records, we have identified the specific individuals in the
7 papers. There are eight al Qaeda members and one al Qaeda
8 financier for whom we are seeking the transactional records.
9 Then there is the issue of Taliban accounts.

10 THE COURT: Just so I am clear on that, that's
11 different than the accounts for which some documents have been
12 produced by DIB or those are those accounts?

13 MR. CARTER: Those are those accounts, your Honor, for
14 which we have statements.

15 THE COURT: Okay.

16 MR. CARTER: So, there is a handful of accounts we are
17 seeking more than account statements and a handful of opening
18 documents.

19 The second issue is the Taliban accounts and we still
20 don't have any meaningful production of Taliban accounts
21 whatsoever.

22 Now, on the 152, your Honor, I would simply caution
23 that that is one letter from the UAE. Now, we don't know what
24 is on it, we don't know if it is synonomous with the list
25 that's maintained by the U.N. sanctions and so we would need to

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1 see what that 152 names consisted of to see whether it
2 reconciles with what the United Nations said was the
3 composition of the Taliban as of essentially 9/11 and the
4 period before it.

5 Again, we just haven't seen the names so we don't have
6 an idea on that.

7 The next area relates to the investigations pertaining
8 to DIB accounts implicated in the embassy bombings. One of the
9 logistics people for embassy bombings and procurement expert
10 who was arrested by German authorities had three cards for DIB
11 accounts and then there was separate indications that
12 authorities asked DIB to close, I believe it was, 16 Taliban
13 accounts at that time.

14 So, there is the general issue of Taliban accounts as
15 well as any particular accounts that they were asked to close
16 in the wake of the embassy bombings.

17 Your Honor, there was a comment about cash
18 transactions essentially being irrelevant on the whole. I
19 think I agree with Mr. Cottreau that a debit/cash withdrawal of
20 \$200 is not a big deal. A cash withdrawal of \$40,000 or
21 \$50,000 from a branch that doesn't generate a suspicious
22 activity report may actually be relevant.

23 So, I just simply want to reserve the notion that not
24 every cash transaction might be irrelevant.

25 That's it, your Honor.